

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**NATIONAL LABOR RELATIONS
BOARD**

Petitioner

v.

RHINO NORTHWEST LLC

Respondent

Circuit No. 20-71407

**Board Case Nos.:
19-CA-211309
19-CA-221359**

**OBJECTION AS TO FORM OF PROPOSED JUDGMENT
ENFORCING AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Respondent Rhino Northwest, LLC (“Respondent”), through undersigned counsel, respectfully submits this Objection as to Form of Proposed Judgment Enforcing an Order of the National Labor Relations Board.

On July 27, 2020, the Court entered an Order (Doc. 11-1) and Proposed Judgment (Doc. 11-2) that, absent an Objection as to Form, would result in entry of the Proposed Judgment enforcing an Order of the National Labor Relations Board (the “Board) in this matter. Rhino hereby objects to the form of the Proposed Judgment. The Court should not enter the Proposed Judgment for two reasons.

First, Respondent has not resisted or failed to comply with the Board’s Order in any manner, but rather has undertaken all steps necessary for compliance as specified in both the Board’s Order, and by the Board’s staff. This Application thus constitutes an unnecessary and improper waste of the Court’s time, Respondent’s resources, and the Board’s own resources.

Second, the Board failed to abide by its own compliance procedures here. Section 10606

of the Board's Compliance Manual, "Criteria for Recommending Enforcement Proceedings," states, "Normally, an enforcement recommendation should be made only after efforts have been made to procure compliance." This explanation follows descriptions in Section 10602 and 10604 of procedures for compliance investigations and compliance determinations, utilized to determine whether a respondent is in compliance. Regarding the recommendation itself, the Manual explains at 10606.3, "If it appears likely that a respondent will not comply with the Board's order, enforcement should be recommended. A respondent may demonstrate unwillingness to comply by its response to inquiries, requesting repeated conferences or otherwise delaying."

None of these procedures occurred here, and Rhino engaged in none of the conduct described in Section 10606.3. To the contrary, Rhino submitted documents demonstrating its compliance on January 13, 2020. Rhino then received no further communications from the Board regarding this matter until receiving a May 7, 2020 enforcement recommendation letter. Had the Board engaged in the prescribed compliance investigation and determination procedures, Rhino would have expressed its desire to remain in full compliance, and its willingness to take any identified steps necessary to ensure compliance. Instead, rather than following the agency's established procedures for compliance investigations and determinations, the Board improperly jumped to this enforcement action. The Board pursued these actions despite Rhino's full compliance, and without any prior notification to Rhino.

Under such circumstances, the entry of an unnecessary Judgment against a party that remains in full compliance is inappropriate. The Court should dismiss the Board's Application for Enforcement in its entirety.

Respectfully submitted,

Date: August 10, 2020

/s/ Timothy A. Garnett
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